UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHAWN THOMAS MOORE,	No. 2:14-cv-00870-DSC-MPK
Plaintiff,	
v.	CIVIL ACTION - LAW
SUSEN ROSSINO, M.D.; BRIAN LUFFEY; PRIMECARE MEDICAL INC.,	District Judge David S. Cercone
	Magistrate Judge Maureen P. Kelly
Defendants.	JURY TRIAL DEMANDED

MOTION TO STRIKE "ERRORS OF FACT AND DISPUTED FACTS DECIDED IN FAVOR OF DEFENDANT ROSSINO"

AND NOW comes Defendant Susen Rossino, M.D., by and through her counsel, Terry C. Cavanaugh, Esquire, Brett C. Shear, Esquire and Marshall Dennehey Warner Coleman & Goggin, and files the following Motion to Strike "Errors of Fact and Disputed Facts Decided in Favor of Defendant Rossino" stating as follows:

1.   On December 13, 2017, The Honorable Maureen P. Kelly entered a Report and Recommendation that Summary Judgment be granted in favor of Dr. Rossino in this matter. Doc. 173.

2.   As part of that Report and Recommendation, Plaintiff was advised that he was permitted to file written objections in accordance with 28 U.S.C. §636(b)(1), Id.

3.   On December 19, 2017, Plaintiff filed a Motion for Extension of Time to file written objections, and *only* written objections. See Doc. 174, ¶7. In other words, Plaintiff's counsel did not request an extension to file additional materials other than his objections.

4.   On December 19, 2017, the Court entered an Order granting Plaintiff's Motion for Extension of Time to File Objections providing that the "objections to the Report and Recommendation of the Court are due by 1/10/18." Doc. 175.

5.   On January 10, 2018, Plaintiff filed written objections to the Report and Recommendation of the Magistrate. Doc. 176.

6.   Plaintiff also filed what he terms "Errors of Fact and Disputed Facts Decided in Favor of Defendant Rossino." This appears to have been prepared solely by Plaintiff Shawn Moore and not his counsel. His counsel has not signed this document.

7.   This filing appears to be an attempt to supplement the record after the Summary Judgment Motion has already been fully briefed and the Magistrate Judge's Report has been issued.

8.   The Magistrate Judge's Act, 28 U.S.C. §636(b)(1) allows a party to file only written objections to a Magistrate Judge's Report and Recommendation. Local Rule 72(D)(2) also only permits Plaintiff to file Objections to the Magistrate Judge's proposed findings.

9.   There is absolutely no procedural mechanism to allow Plaintiff to file anything other than objections and there is certainly no procedure whereby a party can supplement the record after the fact with additional evidence or arguments not raised in the original summary judgment filings.

10.   Yet, that is precisely the purpose of Plaintiff's document titled "Errors of Fact and Disputed Facts Decided in Favor of Defendant Rossino."

11.   Plaintiff's counsel has already filed the Objections permitted by the relevant statute and Rules.

12.   The Defendant should not, in addition to responding to the Objections filed by Plaintiff's counsel, be forced to respond to an additional filing by Plaintiff himself raising new arguments, especially where that filing is not permitted by the relevant Rules and statutes.

13.   Plaintiff's filing is also untimely because Plaintiff's counsel's Motion for Extension of Time only requested an extension to file objections and <u>not</u> an additional filing by Plaintiff himself complaining about the Magistrate Judge's Report and Recommendation.

14.   This additional filing is improper and must be stricken.

WHEREFORE, Defendant, Susen Rossino, M.D., respectfully requests that the Court grant her Motion and strike the document labeled "Errors of Fact and Disputed Facts Decided in Favor of Defendant Rossino" attached to Plaintiff's Objections.

Respectfully submitted,

**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN**

BY: _/s/ Brett C. Shear_____
TERRY C. CAVANAUGH, ESQUIRE
PA I.D. #16702
BRETT C. SHEAR, ESQUIRE
PA I.D. #92244
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
(412) 803-1140 // (412) 803-1188 fax
tccavanaugh@mdwcg.com
Counsel for Susen Rossino, M.D.